IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Tr.P(C).No. 50 of 2006()

OS.536/2005 of MUNSIFF COURT,TRIVANDRUM
.....

PETITIONER:

THANKAMMA, W/O. P.T.A.ACHARI,
SWADHAM, NEAR MODEL ENGINEERING COLLEGE,
B.M.C.P.O., ERNAKULAM (DT).

BY ADV. SRI.C.HARIKUMAR
SRI.VIZZY GEORGE KOKKAT
SRI.RAVIDASAN.N.S.

RESPONDENT:

N.SIVADAS, S/O. NARAYANA PILLAI,
PUTHEN VEEDU, PONNUMANGALAM,
NEMOM (PO), THIRUVANANTHAPURAM.

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

Transfer Petition (Civil) No. 50 OF 2006

Dated this the 10th day of September, 2007.

O R D E R

The petitioner herein is the defendant in O.S. No. 536/2005 on the file of Munsiff Court, Thiruvananthapuram. The suit was filed by the respondent herein as plaintiff for realisation of Rs. 77,500/- with 12% interest. Annexure A1 is the true copy of the plaint in the said suit. The respondent in Paragraph 1 of Annexure A1 plaint has stated that he is an employee of H.M.T Kalamassery which is situated within the jurisdiction of Munsiff Court, Aluva.

2. In paragraph 2 of Annexure A1 it is averred that the defendant issued a cheque drawn on State Bank of Travancore, Thrikkakkara Civil Station Branch, Ernakulam District. Since the cheque was returned unpaid with an endorsement 'funds insufficient', the said suit was filed for the aforementioned reliefs.

3. The respondent also instituted S.T. No. 795/2004 before the Judicial First Class Magistrate's Court-II, Thiruvananthapuram under Section 138 r/w Section 142 of the Negotiable Instruments Act against the petitioner herein for proceeding against her for

the offences punishable under Section 138 of the N.I. Act.

4. The petitioner filed Transfer Petition (Crl) No. 10/2005 for transfer of S.T. No. 795/2004 pending before the Judicial First Class Magistrate's Court -II, Thiruvananthapuram to one of the courts at Aluva. The petitioner met with a motor accident and sustained serious injuries and suffered 40% disability. Considering the above said facts and circumstances, this Court found that interest of justice warrants that the case has to be tried in a court nearer to Kalamassery where second respondent is employed. Accordingly, the transfer petition was allowed and the case was transferred to the Judicial First Class Magistrate-I, Aluva for trial and disposal.

5. On a reading of Annexure A1 plaint, it can be seen that the plaintiff-respondent is working in H.M.T. Kalamassery within the jurisdiction of Munsiff Court, Aluva. The petitioner herein is also a resident of Kalamassery. The cheque allegedly was drawn on SBT, Ernakulam. According to the petitioner, only with the sole objective of obtaining unfair advantage over the petitioner, the respondent-plaintiff has sought to file the suit before the court at Thiruvananthapuram. It is also submitted by the counsel

for the petitioner that the respondent-plaintiff is an employee of H.M.T, Kalamassery and he is residing at H.M.T quarters at Kamalassery and that the children of the respondent are also studying at Bhavan's Vidya Mandir, Kakkanad.

6. According to the petitioner, with the obvious motive of harassing the petitioner, the respondent has sought to institute the criminal and civil proceedings against her at Thiruvananthapuram. According to her, since she being a disabled person and a lady aged more than 60 years, she will be put to severe hardships since she has to undertake constant trips to Thiruvananthapuram in connection with the case which was filed at Thiruvananthapuram.

7. Finding that the petitioner is a 60 year old lady and had suffered major injuries in a motor vehicle accident and that she is a physically handicapped person, I am of the view that severe hardships will be caused to her by the pendency of suit before the Munsiff Court, Thiruvananthapuram.

Considering the facts and circumstances of the case, I find that the interest of justice warrants that the case has to be transferred to the Munsiff Court, Aluva where the parties are

residing. In the above circumstances, transfer petition is allowed. O.S. No. 536/2005 pending before the Munsiff Court, Thiruvananthapuram is transferred to Munsiff Court, Aluva for trial and disposal.

HARUN-UL-RASHID, JUDGE.

smp